TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 344. 133

THE BOARD OF SUPERVISORS OF THE COUNTY OF WASHINGTON, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL. CLARK DURANT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED DECEMBER 10, 1868.

Ferry Boat Land Co

SUPREME COURT OF THE UNITED STATES.

No. 341.

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vs.

THE UNITED STATES EX REL. CLARK DURANT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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A Fees for transcript $17 00

Pleas and proceedings had in the Circuit Court of the United States for the district of Iowa, at the regular term thereof begun and held at the city of Des Moines on the 16 day of May and 22d day of October, A. D. 1867.

Hon. S. F. MILLER,
Circuit Judge Presiding.
Hon. J. M. LOVE,
District Judge.

B Circuit Court United States district of Iowa.

Be it remembered that heretofore, to wit, on the 1st day of April, A. D. 1867, there was filed, in the office of the clerk of the Circuit Court of the United States for the district of Iowa, an information for a writ of mandamus, in words and figures following, to wit:

1 In the Circuit Court of the United States for the district of Iowa.

Information for mandamus.

THE UNITED STATES ON RELATION of Clark Durant
vs.
THE BOARD OF SUPERVISORS OF Washington County.

Now comes Clark Durant, and, by leave of the court had and obtained, files his information and gives the court to be informed that he is a citizen of the State of New York, and the county of Washington is a corporation created by and a citizen of the State of Iowa.

That on the 21st day of November, 1853, the county judge of Washington, Iowa, in due form of law, submitted to the electors of that county the question of a subscription by the said county of one hundred thousand dollars to the stock of the Philadelphia, Ft. Wayne and Platt River Air Line railroad, and of issuing the bonds of said county to pay said subscription, bearing six per cent. interest and having not more than twenty years to run, and said proposition was adopted by a majority of the voters of said county and duly entered at large on the minute book of said county.

That on the 7th day of August, 1854, the county judge of said county of Washington submitted to the electors of said county
2 of Washington the proposition, that the said Washington county will rescind fifty thousand dollars of the stock voted to the Philadelphia, Ft. Wayne and Platt River Air Line railroad at the special election in said county in November, 1853, and subscribe the same to the Mississippi and Missouri Railroad Company, and said Washington county will subscribe fifty thousand dollars stock when so rescinded to the Mississippi and Missouri railroad, and issue county bonds there-

for bearing interest at a rate not greater than ten per cent. per annum and payable in twenty years from date, and that there be a tax of five mills on the dollar, if necessary, levied on the taxable property of said county from year to year for the purpose of paying the interest on said bonds, and after the expiration of fifteen years the rate of tax be so increased as not to exceed one per cent. on the dollar, if necessary, for the purpose of paying off said bonds, said rate of tax to be continued until said bonds with the interest is all paid, unless said bonds are otherwise disposed of, and that said bonds shall not be issued except said Mississippi and Missouri Railroad Company receive said bonds at their par value in payment of stock in said railroad, and then only as fast as the said road progresses towards completion within the limits of said county.

That at said election said proposition was duly adopted by a majority of the electors of said county, and the proposition and vote were by the county judge duly entered at large on the minute book of said county.

3 That at said election said proposition was duly adopted by a majority of the electors of said county, and the proposition and vote were by the county judge duly entered at large on the minute book of said county.

And on the 5th day of April, 1858, the county judge of said county of Washington, did in due form of law submit to the electors of Washington county the following proposition; that the county of Washington, in the State of Iowa, will aid in the construction of the Mississippi and Missouri railroad by the subscription of one hundred thousand dollars in addition to the $50,000 dollars already authorized, to the capital stock of said railroad company, and the bonds of said county be issued in payment of said stock bearing interest at the rate of ten per cent. per annum payable twenty years from date, and that there be a tax of not more that three mills on the dollar levied on the taxable property of said county from year to year for the purpose of paying the interest of said bonds; and after the expiration of fifteen years, the said tax be so increased as not to exceed ten mills on the dollar for the purpose of paying off said bonds; said tax to continue from year to year until the said bonds are all paid off unless otherwise disposed of; said bonds not to be issued unless said company give to said county good and sufficient security approved by the county judge, in the sum of two hundred thousand dollars, conditioned that said railroad be completed and in good running

4 order to the town of Washington, in said county in said State, by the 1st day of September, 1858, and that a depot be permanently established not more than one half mile from the courthouse in said town of Washington, and not then unless the said railroad company take said bonds at their face in the payment of stock in said road; said stock to be issued direct to the county; said election to be governed by the election laws of the State of Iowa; that at said election a majority of the votes cast were in favor of said proposition, and the county judge did cause the same and the result of said vote to be entered at large on the minute book of said county.

That each class of said bonds were issued by the said county judge with coupons or interest notes for the interest payable every six months; said bonds were made payable to James Dawson or bearer.

The following are copies of each class of said bonds:

$500 00. UNITED STATES OF AMERICA. No. 1.

State of Iowa, County of Washington :

The county of Washington, for and in consideration of five shares of one hundred dollars each of the capital stock of the Mississippi and Missouri Railroad Company, promise to pay to James Dawson or bearer, the sum of five hundred dollars on the first day of July, 1878, with interest thereon at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July in each year, principal and interest, payable at the Corn Exchange Bank, in the city of New York. And the faith of said county of Washington is hereby pledged for the semi-annual payment of interest and the ultimate redemption of the principal.

I, S. P. Young, county judge of the county of Washington do hereby certify that by a vote of the legal electors of said county, at an election held on the seventh day of August, 1854, in accordance with a proposition submitted to them according to the laws of the State, the county judge of Washington county was authorized to subscribe fifty thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company, and issue county bonds to the same amount, payable in twenty years, and bearing interest at the rate of ten per cent. per annum, and that the above is one of one hundred bonds of five hundred dollars each, numbered from one to one hundred, given for said subscription.

In testimony whereof I have hereunto set my hand and affixed the seal of the county this first day of July, 1858.

S. P. YOUNG,
County Judge.

Attest:
[L. S.] ALBERT ALLEN,
County Clerk.

Copy of coupons.

The county of Washington, Iowa, will pay at the Corn Exchange Bank, in the city of New York, on the first day of July, 1859, twenty-five dollars for interest on said bond No. 1.

$25 00. S. P. YOUNG,
County Judge.

Copy of bonds under vote 5 April, 1858.

$1,000 00. THE UNITED STATES OF AMERICA. No. 1.

State of Iowa :

The county of Washington, for and in consideration of ten shares of one hundred dollars each, of the capital stock of the Mississippi and Missouri Railroad Company, promise to pay to
6 James Dawson or bearer, the sum of one thousand dollars, on the first day of July, 1878, with interest at the rate of ten per cent. per annum, payable on the first day of January and July in each year. Principal and interest payable at the Corn Exchange Bank, in the city of New York.

And the faith of said county of Washington is hereby pledged for the semi-annual payment of the interest, and the ultimate redemption of the principal.

I, S. P. Young, county judge of the said county of Washington, do hereby certify that by a vote of the legal electors of said county, at an election had on the fifth day of April, 1858, in accordance with a proposition submitted to them according to the laws of the State of Iowa, the county judge was authorized to subscribe one hundred thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company, and issue county bonds to the same amount, payable in twenty years, and bearing interest at the rate of ten per cent. per annum; and that the above is one of one hundred bonds of one thousand dollars each, numbered from one to one hundred, given for said subscription.

In testimony whereof I have hereto set my hand and affixed the seal of the county this first day of July, 1858.

S. P. YOUNG,
County Judge.

Attest:
[L. S.] ALBERT ALLEN,
County Clerk.

Copy of coupons.

7 The county of Washington, Iowa, will pay the bearer at the Corn Exchange Bank, in the city of New York, on the first day of July, 1859, fifty dollars for interest due on that day on bond No. 1.

$50 00. S. P. YOUNG,
County Judge.

The relator further shows, that said bonds were issued in each class in due form of law, and that the relator became the bona fide holder of a large quantity of said bonds and coupons, and the said county of Washington having neglected to pay the interest on said bonds, the relator on the 15th day of August, 1861, commenced his action at law in the United States District Court for the State of

Iowa, to which court the present Circuit Court has succeeded. That in his said action in said District Court, the defendant being duly served with process, did appear to the said action, and on the 17th day of September, filed a plea to the jurisdiction of said court, that an action was pending in the District Court for the county of Washington, and State of Iowa, wherein one McLure and others were plaintiffs, and the said county of Washington, and others, and the unknown holders of said bonds, were defendants. That said plea to the jurisdiction of said United States District Court was overruled, and thereupon, on the 9th day of October, 1860, the said defendant filed an amended plea to the jurisdiction of said United States District Court, setting up that one Nathaniel McLure and others had brought their bill in equity in the State District Court of Washington county,
8 Iowa, against the county judge of Washington county, and said plaintiff in this suit among others were defendants; that said bill was presented to the State judge of said Washington county District Court, at the April term 1860, and an injunction allowed by the judge thereof against the levying and collecting of any tax to pay said bonds; that an injunction was issued and was then pending in the State court, and the injunction in full force and unsatisfied. That said bill in the State court sought to restrain the payment of said bonds and interest, on the grounds, among others, that said bonds were illegally issued and in violation of the constitution of the State of Iowa. The relator demurred to said amended plea to the jurisdiction, and the federal court held the said plea invalid.

That the defendant filed several answers to said plaintiffs' suit in the federal court, and on the 28th day of March, 1861, an amended answer, wherein the defendant did set forth that said bonds were illegally issued, and that they were not authorized by the constitution of the State of Iowa; and afterwards on the 21st of March, 1862, the said plaintiff and said defendant did file an agreed case to be regarded as a special verdict of a jury, in said agreed case, the whole facts in relation to the issue of said bonds, the records of the county court, the instalments of interest due for July, 1859, January, 1860, and July, 1860, the plea of the defendant that said bonds were illegal and unconstitutional were set out, and the said cause was duly submitted to the court, and the court upon said agreed facts,
9 did find the law for the plaintiff, and on the first day of April, 1862, did order and adjudge that the plaintiff recover of the defendant the sum of twenty-five thonsand five hundred and thirty-seven $\frac{50}{100}$ dollars, as by the records of said cause now on file in this court will more fully appear.

And the said plaintiff avers, that prior to the year 1860, it was the duty of the county judge of said county to cause to levied the taxes specified in said votes of the people of Washington county to pay the interest on said coupons, and he neglected to perform that duty, and after the year 1860, the general assembly of the State of Iowa did authorize the board of supervisors of Washington county to provide for the levy and collection of said taxes. That the valuation of the property in Washington county is not less than four millions of dol-

Copy of bonds under vote 5 April, 1858.

$1,000 00. THE UNITED STATES OF AMERICA. No. 1.

State of Iowa :

The county of Washington, for and in consideration of ten shares of one hundred dollars each, of the capital stock of the Mississippi and Missouri Railroad Company, promise to pay to
6 James Dawson or bearer, the sum of one thousand dollars, on the first day of July, 1878, with interest at the rate of ten per cent. per annum, payable on the first day of January and July in each year. Principal and interest payable at the Corn Exchange Bank, in the city of New York.

And the faith of said county of Washington is hereby pledged for the semi-annual payment of the interest, and the ultimate redemption of the principal.

I, S. P. Young, county judge of the said county of Washington, do hereby certify that by a vote of the legal electors of said county, at an election had on the fifth day of April, 1858, in accordance with a proposition submitted to them according to the laws of the State of Iowa, the county judge was authorized to subscribe one hundred thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company, and issue county bonds to the same amount, payable in twenty years, and bearing interest at the rate of ten per cent. per annum; and that the above is one of one hundred bonds of one thousand dollars each, numbered from one to one hundred, given for said subscription.

In testimony whereof I have hereto set my hand and affixed the seal of the county this first day of July, 1858.

S. P. YOUNG,
County Judge.

Attest:
[L. S.] ALBERT ALLEN,
County Clerk.

Copy of coupons.

7 The county of Washington, Iowa, will pay the bearer at the Corn Exchange Bank, in the city of New York, on the first day of July, 1859, fifty dollars for interest due on that day on bond No. 1.

$50 00. S. P. YOUNG,
County Judge.

The relator further shows, that said bonds were issued in each class in due form of law, and that the relator became the bona fide holder of a large quantity of said bonds and coupons, and the said county of Washington having neglected to pay the interest on said bonds, the relator on the 15th day of August, 1861, commenced his action at law in the United States District Court for the State of

Iowa, to which court the present Circuit Court has succeeded. That in his said action in said District Court, the defendant being duly served with process, did appear to the said action, and on the 17th day of September, filed a plea to the jurisdiction of said court, that an action was pending in the District Court for the county of Washington, and State of Iowa, wherein one McLure and others were plaintiffs, and the said county of Washington, and others, and the unknown holders of said bonds, were defendants. That said plea to the jurisdiction of said United States District Court was overruled, and thereupon, on the 9th day of October, 1860, the said defendant filed an amended plea to the jurisdiction of said United States District Court, setting up that one Nathaniel McLure and others had brought their bill in equity in the State District Court of Washington county,
8 Iowa, against the county judge of Washington county, and said plaintiff in this suit among others were defendants; that said bill was presented to the State judge of said Washington county District Court, at the April term 1860, and an injunction allowed by the judge thereof against the levying and collecting of any tax to pay said bonds; that an injunction was issued and was then pending in the State court, and the injunction in full force and unsatisfied. That said bill in the State court sought to restrain the payment of said bonds and interest, on the grounds, among others, that said bonds were illegally issued and in violation of the constitution of the State of Iowa. The relator demurred to said amended plea to the jurisdiction, and the federal court held the said plea invalid.

That the defendant filed several answers to said plaintiffs' suit in the federal court, and on the 28th day of March, 1861, an amended answer, wherein the defendant did set forth that said bonds were illegally issued, and that they were not authorized by the constitution of the State of Iowa; and afterwards on the 21st of March, 1862, the said plaintiff and said defendant did file an agreed case to be regarded as a special verdict of a jury, in said agreed case, the whole facts in relation to the issue of said bonds, the records of the county court, the instalments of interest due for July, 1859, January, 1860, and July, 1860, the plea of the defendant that said bonds were illegal and unconstitutional were set out, and the said cause was duly submitted to the court, and the court upon said agreed facts,
9 did find the law for the plaintiff, and on the first day of April, 1862, did order and adjudge that the plaintiff recover of the defendant the sum of twenty-five thonsand five hundred and thirty-seven $\frac{50}{100}$ dollars, as by the records of said cause now on file in this court will more fully appear.

And the said plaintiff avers, that prior to the year 1860, it was the duty of the county judge of said county to cause to levied the taxes specified in said votes of the people of Washington county to pay the interest on said coupons, and he neglected to perform that duty, and after the year 1860, the general assembly of the State of Iowa did authorize the board of supervisors of Washington county to provide for the levy and collection of said taxes. That the valuation of the property in Washington county is not less than four millions of dol-

lars, and a levy of three mills on the dollar in the case of each class of said bonds will produce more than sufficient to pay the yearly interest on each class of bonds. That both before and after the recovery of said judgment, it was the duty of said board of supervisors to levy and cause to be collected the said taxes, and a demand has been made on the said board of supervisors, that they levy and cause said taxes to be collected to pay said judgment, interest and costs, and that they have refused so to do.

That of said judgment one-third, or the sum of $8,512 $\frac{50}{100}$ was due on the bonds issued under the vote of 7th of August, 1854, and two-thirds, or the sum of $17,025 $\frac{00}{100}$ due on the bonds issued
10 under the vote of 5th of April, A. D. 1858.

That your relator is without other adequate remedy at law.

The relator prays for a writ of mandamus to be directed to the board of supervisors of the county of Washington, Iowa, commanding them forthwith to levy and cause to be collected a specific tax of not over three mills on the dollar of the taxable property of said county sufficient to pay the sum of eight thousand five hundred and twelve 50-100 dollars of said judgment and interest, under and by virtue of the vote of the electors of said county on the 7th of August, 1854.

And a specific tax of not over three mills on the dollar on the taxable of said county, sufficient to pay the sum of seventeen thousand and twenty-five dollars, the balance of said judgment and interest, under and by virtue of the vote of the electors of said county on the 5th day of April, 1858, and costs of said suit and the costs of this writ, and that they cause said taxes to be collected continuously every year in payment of said judgment, interest and costs.

CLARK DURANT,
By S. GRANT, *Att'y.*

STATE OF IOWA, *Scott county* :

I, James Grant, declare on oath that I am the plaintiff's attorney, and familiar with the records and facts in the above information named, and I verily believe the facts therein set forth to be true.

JAMES GRANT.

Subscribed and sworn to by James Grant before me and in
11 my presence this 7th day of March, A. D. 1867.

Witness my hand and seal notarial this day and year last above written.

[L. S.]

S. F. SMITH,
Notary Public, Scott Co., Iowa.

And afterwards, at the May term of said Circuit Court, A. D. 1867, the Hon. S. F. Miller, one of the judges of the Supreme Court of the United States, presiding, and the Hon. J. M. Love,

Among other the following proceeding was had, to wit:

UNITED STATES *ex rel.* CLARK DURANT
vs.
THE BOARD OF SUPERVISORS OF WASHINGTON County. } No. 424. Law.

This cause now coming on to be heard on the petition for an alternative writ of mandamus to issue, and the court having fully considered the same, it is now ordered that the writ issue as asked, returnable to the next term of this court.

And afterwards, to wit, on the 16th day of May, A. D. 1867, an alternative writ of mandamus issued from the office of the clerk of said Circuit Court in words and figures following, to wit:

12 The United States of America to the Board of Supervisors of the county of Washington, in the State of Iowa:

Whereas it has been suggested to the judges of our Circuit Court for the United States for the district of Iowa, that Clark Durant is a citizen of the State of New York, and the county of Washington is a corporation created by and is a citizen of the State of Iowa, and that on the 21st of November, 1853, the county judge of Washington, Iowa, did in due form of law submit to the electors of that county the question of a subscription by the said county of one hundred thousand dollars to the stock of the Philadelphia, F. Wayne and Platte River Air Line railroad, and issuing the bonds of said county to pay such subscription bearing six per cent. interest and having not more than twenty years to run, and said proposition was adopted by a majority of the voters of said county and duly entered at large on the minute book of said county.

That on the 7th day of August, 1854, the county judge of said Washington county submitted to the electors of said county of Washington the proposition that the said Washington county will rescind fifty thousand dollars of the stock voted the Philadelphia, Ft. Wayne and Platte River Air Line railroad at the special election held in said county in November, 1853, and subscribe the same to the Mississippi and Misouri railroad, and said Washington county
13 will subscribe fifty thousand dollars stock when so rescinded to the Mississippi and Missouri railroad, and that there be issued county bonds therefor bearing interest at a rate not greater than ten per cent. per annum and payable in twenty years from date, and that there be a tax of five mills on the dollar, if necessary, levied on the taxable property of said county, from year to year, for the purpose of paying the interest on said bonds; and after the expiration of fifteen years the rate be so increased as not to exceed one per cent. on the dollar, if necessary, for the purpose of paying off said bonds, said rate of tax to be continued until said bonds with the interest is all paid, unless said bonds are otherwise disposed of; and that said bonds shall not be issued except said Mississippi and Missouri Railroad Company receive said bonds at their par value in payment of

stock in said railroad, and then only as fast as the road progresses towards completion within the limits of said county.

That at said election said proposition was duly adopted by a majority of the electors of said county and the proposition and the vote were by the county judge duly entered at large on the minute book of said county.

And on the 5th day of April, 1858, the county judge of said county of Washington did in due form of law submit to the electors of Washington county the following proposition: That the county of Washington in the said State will aid in the construction of the
14 Mississippi and Missouri railroad by the subscription of one hundred thousand dollars in addition to the 50,000 dollars already authorized to the capital stock of said railroad company, and the bonds of said county be issued in payment of said stock, bearing interest at the rate of ten per cent. per annum, payable in twenty years from date, and that there be a tax of not more than three mills on the dollar levied on the taxable property of said county from year to year for the purpose of paying the interest on said bonds, and after the expiration of fifteen years the said tax to be so increased as not to exceed ten mills on the dollar for the purpose of paying off said bonds; said tax to continue from year to year until said bonds are all paid off, unless otherwise disposed of. Said bonds not to be issued unless said company give to said county good and sufficient security, approved by the county judge, in the sum of two hundred thousand dollars, conditioned that the said road be completed and in good running order to the town of Washington, in said county and State, by the 1st day of September, 1858, and that a depot be permanently established not more than one-half mile the court-house in said town of Washington, and not then unless said company [said company] take said bonds at their face in payment for stock in said road; said stock to be issued direct to the county; said election to be governed by the election laws of the State of Iowa. That at said election a majority of the votes cast were in favor of said proposition and
15 the said county judge then caused the same and the result of the vote to be entered at large on the minute book of said county.

That each class of said bonds were issued by the said county judge, with the coupons or interest notes for the interest, payable every six months; said bonds were made payable to James Dawson or bearer. The following are copies of each class of said bonds:

$500. UNITED STATES OF AMERICA. No. 1.

State of Iowa, county of Washington.

The county of Washington, for and in consideration of five shares, of one hundred dollars each, to the capital stock of the Mississippi and Missouri Railroad Company, promise to pay to James Dawson or bearer the sum of five hundred dollars, on the first day of July, 1878, with interest thereon at the rate of ten per cent. per annum,

payable semi-annually, on the first day of January and July in each year, principal and interest payable at the Corn Exchange Bank, in the city of New York. And the faith of the said county of Washington is hereby pledged for the semi-annual payment of interest, and the ultimate redemption of the principal.

I, S. P. Young, county judge of the county of Washington, do hereby certify that by a vote of the legal electors of said county, at an election held on the seventh day of August, 1854, in accordance with a proposition submitted to them according to the laws of
16 the State, the county judge of Washington county was authorized to subscribe fifty thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company, and issue county bonds to the same amount, payable in twenty years, and bearing interest at the rate of ten per cent. per annum; and that the above is one of one hundred bonds of five hundred dollars each, numbered from one to one hundred, given for said subscription.

In testimony whereof I have hereto set my hand and affixed the seal of the county this first day of July, 1858.

[L. S.] S. P. YOUNG,
County Judge.

Attest: ALBERT ALLEN, *Clerk.*

Copy of coupons.

The county of Washington, Iowa, will pay at the Corn Exchange Bank, in the city of New York, on the first day of July, 1859, twenty-five dollars for interest due that day on bond No. 1.

$25. S. P. YOUNG,
County Judge.

Copy bonds under vote 5th April, 1858.

The United States of America, State of Iowa.

$1,000. No. 1.

The county of Washington, for and in consideration of ten shares, of one hundred dollars each, of the capital stock of the Mississippi and Missouri Railroad Company, promise to pay James Dawson or bearer the sum of one thousand dollars, on the first day of
17 July, 1878, with interest thereon at the rate of ten per cent. per annum, payable on the first day of January and the first day of July in each year, principal and interest payable at the Corn Exchange Bank, in the city of New York. And the faith of said county of Washington is hereby pledged for the semi-annual payment of the interest and the ultimate redemption of the principal.

I, S. P. Young, county judge of the county of Washington, do hereby certify that by a vote of the legal electors of said county at an elnction held on the fifth day of April, 1858, in accordance with

a proposition submitted to them according to the laws of the State of Iowa, the county judge was authorized to subscribe one hundred thousand dollars to the capital stock of Mississippi and Missouri Railroad Company, and issue county bonds to the same amount, payable in twenty years, and bearing interest at the rate of ten per cent.; and that the above is one of one hundred bonds of one thousand dollars each, numbered from one to one hundred, given for said subscription.

In testimony whereof I have hereto set my hand and affixed the seal of the county this first day of July, 1858.

[L. S.] S. P. YOUNG,
County Judge.

Attest: ALBERT ALLEN, *Clerk.*

Copy of coupons.

The county of Washington, Iowa, will pay the bearer, at
18 the Corn Exchange Bank, in the city of New York, on the first day of July, 1859, fifty dollars for interest due that day on bond No. 1.

$50. S. P. YOUNG,
Co. Judge.

That the relator further shows that said bonds were issued in each class in due form of law, and the relator became the bona fide owner and holder of a large quantity of said bonds and coupons; and the said county of Washington having neglected to pay the interest on said bonds, the relator, on the 15th day of August, 1860, commenced his action at law in the United States District Court for the State of Iowa, to which the present Circuit Court has succeeded; that in his said action in said District Court, the defendant, being duly served with process, did appear to the said action, and on the 17th of September filed a plea to the jurisdiction of said court, that an action was pending in the District Court for the county of Washington and State of Iowa, wherein one McLure and others were plaintiffs, and the said county of Washington and others and the unknown holders of said bonds were defendants.

That said plea to the jurisdiction was overruled, and thereupon, on the 9th of October, 1860, the said defendant filed an amended plea to
19 the jurisdiction of said United States District Court, setting up that one Nathaniel McLure and others had brought their bill in equity in the State District Court of Washington county, Iowa, against the county judge of Washington county, and said plaintiff in this suit among others were defendants; that said bill was presented to the State judge of said Washington county District Court, at the April term, 1860, and an injunction allowed by the judge thereof against the levying and collecting of any tax to pay said bonds; that an injunction was issued and was then pending in the State court, and the injunction in full force and unsatisfied; that said bill in the

State court sought to restrain the payment of said bonds and interest on the grounds, among others, that said bonds were illegally issued and in violation to the constitution of the State of Iowa.

The relator demurred to said amended plea to the jurisdiction, and the federal courts held the said plea invalid; that the defendants filed several answers to said plaintiff's suit in the federal court, and on the 21st of March, 1861, an amended answer, wherein the defendants did set forth that said bonds were illegally issued, and that they were not authorized by the constitution of the State of Iowa. And afterwards, on the 21st of March, 1861, the said plaintiff and said defendant did file an agreed case, to be regarded as a special verdict of a jury. In said agreed case the whole facts in relation to the issue of said bonds, the records of the County Court, the instalments
20 of the interest due July, 1859, Jan., 1860, July, 1860, the pleas of the defendant that said bonds were illegal and unconstitutional, were set out, and the said cause was duly submitted to the court; and the court, upon said agreed facts, did find the law for the plaintiff, and on the 1st day of April, 1862, did order and adjudge that the plaintiff recover of the defendant the sum of twenty-five thousand five hundred and thirty-seven 50-100 ($25,537 50-100) dollars, as by the records of said cause, now on file in this court, will more fully appear.

And that the said plaintiff avers that prior to the year 1860 it was the duty of the county judge of said county to cause to be levied the taxes specified in said votes of the people of Washington county to pay the interest on said coupons, and he neglected to perform that duty; and after the year 1860 the general assembly of the State of Iowa did authorize the board of supervisors of Washington county to provide for the levy and collection of said taxes; that the valuation of the property in Washington county is not less than four millions of dollars, and a levy of three mills on the dollar in the case of each class of said bonds will produce a sum more than sufficient to pay the yearly interest on each class of the same.

That both before and after the recovery of said judgment it was the duty of the said board of supervisors to levy and cause to be collected the [the] said taxes, and a demand has been made on the said board of supervisors that they levy and cause said taxes to be
21 collected to pay said judgment, interest and costs, and that they have refused to do so.

That of said judgments one-third, or the sum of $8,512 50-100, was due on the bonds issued under the vote of the 7th of August, 1854, and two-thirds, or $17,025, due on the bonds issued under the note of 5th of April, A. D. 1858.

That your relator is without other adequate remedy at law.

Now, therefore, we being willing that justice should be done in the premises, do command you, the said board of supervisors of said county of Washington, that you do forthwith levy and cause to be collected a tax of three mills on the dollar, under the vote of the electors of said county on the 7th of August, 1854, and a tax of three mills on the dollar, under the vote of the electors of said county on

the 5th day of April, 1858, on the taxable property of said county, and that you cause said tax to be collected continuously every year, and for the last six years, and when collected that you pay therewith the said judgment of $25,537, and interest from the 1st of April, 1862, and costs; or that you appear before the judges of our said Circuit Court of the United States for the district of Iowa, sitting at Des Moines, at the court-house in Polk county, on the third Tuesday in October, 1867, and on or before the second day of the term, to show why you refuse so to do.

22 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and seal of said Circuit Court for the district of Iowa, this 16th day of May. A. D. 1867.

W. G. WOODWARD,
Clerk C. C. U. S.

And afterwards, to wit, on the 22d day of October, A. D. 1867, the same being the October term of said Circut Court for the district of Iowa, comes the defendants and file their answer to the alternative writ of mandamus, in words and figures following, to wit:

23 In Circuit Court U. S. for Dist. Iowa.

Answer.

UNITED STATES *ex el.* CLARK DURANT
vs.
BOARD OF SUPERVISORS OF WASHINGTON COUNTY. } No. 424.

Now come respondents, the Board of Supervisors of Washington county, Iowa, and answer the alternative writ of mandamus and say:

1. They admit the bonds and coupons described were issued by the county judge in the name of said county after vote taken in subscription to capital stock of the Mississippi and Missouri River R. R. Co.

2. Deny the bonds recite that the vote authorizing their issue was taken.

Have not information in the premises and cannot deny that relator is the owner of said bonds and coupons, but do admit that he was and is the owner thereof.

Deny that said vote and the entry thereof had the effect of a mortgage as alleged.

Deny that it was the duty of the county judge or is the duty of def'ts to levy said tax.

Admit that since the year A. D. 1859, no special tax has been levied to pay said interest coupons.

Admit relator brought suit and recovered judgment in this court on said coupons.

Deny that said vote operated or had the effect in authorizing the levy of said tax, of an act of the general assembly of said state.

24 Def'ts admit that a demand had been made upon them to levy said tax now prayed.

Deny that relator is without other plain and adequate remedy.

Def'ts further answering state as ground why they have not levied said tax prayed for:

That they have always been and now are well disposed to levy said tax, and their predecessor, the county judge of said county, was well disposed to levy said tax and to do and perform all the acts required and to obey all orders and mandates of this honorable court, but they and their predecessor were prevented and legally prohibited from so doing by reason of the facts following, to wit:

That they have had no legal authority to levy said tax since April 12, A. D. 1860, or to levy any tax over and above the general tax of four mills on the dollar upon the taxable property in said county, which amount def'ts have levied for the years A. D. 1863, and A. D. 1864, and for all subsequent years, and did levy a general tax of three mills on the dollar for the years from A. D. 1859 to A. D. 1863, inclusive, and a special tax of 3 mills in year 1859.

That for the year A. D. 1859, the county judge, whose duty it then was to levy all taxes in said county, did levy a special tax of four mills on the dollar, on the taxable property in said county, for the payment of said coupons and the proper officer of said county were in good faith about to proceed to collect said special tax so levied when he was enjoined and prohibited from so doing as
25 hereinafter shown, to wit: On the 12th day of April, A. D. 1860, and long before the bringing of the suit by relator on which he recovered said judgment in said writ named, and before this court acquired any jurisdiction of the said county, or of these def'ts, or of the subject-matter said judgment and suit adjudged, a petition in equity according to the laws of the State of Iowa was filed in the District Court of Washington county, in said State, in which Nathaniel McClure and others named therein were pl'ffs, who sued for themselves and other tax-payers of said county, too numerous to be joined by name, in which suit S. P. Young, the then county judge, and S. G. Owen, the county treasurer of said county and their successors in office were made parties def't, and the Mississippi and Missouri River Railroad Company was made def't, and all of said def'ts were duly served with a notice as by law provided, in the petition in which cause it was averred and alleged that said county judge and treasurer were about to proceed to levy and collect a tax for the payment of said coupons, which are the same coupons on which relator subsequently recovered said judgment, and that said def'ts had no legal authority to levy and collect said special tax for the payment of said coupons, or any of the coupons given and executed for the interest on said bonds in said alternative writ set forth, and praying that said county judge and county treasurer and their successors in office be forever enjoined from levying and collecting said special tax, or any tax for the payment of said bonds and coupons.

26 Def'ts state that they are the successors of said county judge upon whom is now the duty and has been since the year A. D. 1860, under the laws of Iowa, to levy all taxes legally leviable upon the property in said county. That notice of said suit was duly

served upon said county judge and his said co-defendants therein on the 27th day of April, A. D. 1860, and said court acquired and had entire and complete jurisdiction of all of said def'ts in said injunction suit and of the subject matter thereof.

That said petition was duly presented to the Hon. E. W. Miller, the then district judge of the District Court of said State, which included said Washington county, who ordered that the said writ of injunction should issue as prayed for, and a writ of injunction was issued by the clerk of said court upon said order of said judge on the 12th day of April, A. D. 1860, and was legally served on said county judge and treasurer on the 27th day of April, A. D. 1860, and the same is still in full force and operation and is legally binding upon him and his co-defendants and upon these respondents as his successors in office, and who were and have been duly substituted as defendants in said suit as the successors of said county judge are bound by said writ of injunction which was served upon said deft's before any suit had been brought upon said coupons, or any judgment obtained thereon and before this court had acquired jurisdiction of said county, or of said county judge or his co-defendants, or of these defendants, by any legal proceedings whatsoever.

27 Def'ts allege that among other allegations contained therein said petition for injunction alleged that said bonds and coupons had been illegally issued, and were null and void, and that said Mississippi and Missouri River Railroad Company, its officers and agents had full knowledge of the illegality of said bonds and coupons, and of the various illegal acts committed and done by the said county judge and others in issuing them, which acts made them illegal; and that the assignees and holders of said bonds (including Clark Durant, the relator) took them at all, with full notice and knowledge that they had been illegally issued by said county judge, and were invalid and void, and that he had no power to bind the county thereto, and that said assignees or holders were not innocent holders of said bonds and coupons, which holders it was therein prayed wherever known or ascertained might be and they were made parties defendant to said suit in equity, in which it was prayed that the said county judge and treasurer, and these respondents as the successors in office, under the laws of Iowa, appeared A. D. 1860, be forever enjoined from levying any tax for the payment of said bonds, and that the holders of said bonds be forever enjoined from proceeding to collect the said bonds and coupons, or any of them, and for general relief.

Respondents further state that the relator, Clark Durant, on his own motion, on the 16th day of Nov., A. D. 1860, appeared in said court and was made a party defendant therein, and became

28 and was thereby subject to the jurisdiction of the said court, and bound and concluded by all orders and judgments of said court therein, and by the said writ of injunction.

Respondents file herewith a certified copy of the petition, notice, injunction, and of several orders and proceedings of the said court, thereon, and makes the same a part of this answer.

Respendents state that said writ of injunction is in full force and effect, and has not been dissolved, and the same is binding and conclusive upon these respondents and upon the relator and by said injunction respondents are prohibited from proceeding to levy and collect said tax and by said writ of injunction relator is bound and estopped from proceeding in this suit or by any other legal means to enforce and compel the levy and collection of said tax by respondents.

Respondents say further that they cannot do as by said alternative writ of mandamus required by reason of the facts and proceedings hereinbefore set forth, and that by proceeding to levy said tax, they would thereby violate said injunction and would be liable to arrest and imprisonment for contempt of the said District Court of the State which first acquired jurisdiction of respondents and of relator and of the subject-matter of this proceeding.

That respondents are well-disposed to obey the orders and mandates of this court, but that they have legal power or authority so to do without subjecting themselves to great loss, inconvenience
29 and damage.

Respondents say that under and by virtue of the laws of the State of Iowa from which they derive their only authority to levy any tax, their authority is limited to the levy of a tax of 4 mills upon the dollar upon the assessed value of the taxable property of said county for any purpose whatsoever.

That respondents, and their predecessor the county judge, did levy a general tax of 3 mills upon the dollar upon all the taxable property in said county for each and every from A. D. 1859, inclusive, to A. D. 1867, inclusive, which levy was necessary to pay the current expenses of the county and to keep up the county government and organization, and has been appropriated and expended for that purpose, and respondents had no authority to levy more than 1 mill on the dollar over and above the tax they have levied for said years. That for the year 1867 respondents levied a tax of 2½ mills on the dollar leaving 1½ mill only of their power to levy unexhausted.

That for the year 1868 def'ts can make no legal levy until Sept. 1st, A. D. 1868, which is the time appointed by law of said State for making the levy.

That the assessed value of all the taxable property of said county is about 4,200,000 dollars, but the assessment for the year A. D. 1868, has not yet been made, returned and completed, but the same will not exceed four and one-half million dollars, and the levy will
30 be made as soon as can be done by law, to wit, Sept., 1868; that it will require a levy of three mills thereon to pay the necessary current expenses of the county and to maintain the organization and perform the duties required by law to be performed by said county.

That respondents cannot legally levy a tax of more than 4 mills for the year A. D. 1868, and could, even if unrestrained by the injunction of the State Court hereinbefore set forth, levy or appropriate more than 1 mill for the payment of relators' judgment over and

above the 3 mills necessary as aforesaid, to meet the actual current expenses of said county.

And def'ts pray to be hence dismissed and said writ discharged.

H. STRONG & J. R. LEWIS.

I, J. R. Lewis, on my oath depose and say that I am one of the att'ys def't in this cause, duly appointed as such by the board of supervisors of said Washington county, Iowa; that I am advised as to the matters set forth in the above answer and return, and that the matters therein set forth are true; that I have been a member of said board and for a long time acted as their att'y, and am personally knowing to the whole of the facts stated in said answer.

J. R. LEWIS.

Subscribed and sworn to before me this 14th May, 1868.

W. G. WOODWARD, *Clerk.*

31 THE UNITED STATES OF AMERICA:

To the board of supervisors of the county of Washington, in the State of Iowa:

Whereas it has been suggested to the judges of our Circuit Court for the United States for the district of Iowa, that Clark Durant is a citizen of the State of New York, and the county of Washington is a corporation created by and a citizen of the State of Iowa, and that on the 21st day of Nov., 1853, the county judge of Washington, Iowa, did, in due form of law, submit to the electors of that county the question of a subscription by the said county, one hundred thousand dollars to the stock of the Philadelphia, Ft. Wayne and Platte River Air Line railroad and issuing the bonds of said county to pay such subscription, bearing six per cent. interest and having not more than twenty years to run, and said proposition was adopted by a majority of the voters of said county, and duly entered at large on the minute book of said county.

That on the 7th day of August, 1854, the county judge of said Washington county submitted to the electors of said county, the proposition that the said Washington county will rescind fifty thousand dollars of the stock voted to the Philadelphia, Ft. Wayne and Platte River Air Line railroad, at the special election held in said county in November, 1853, and subscribe the same to the Mississippi and Missouri railroad and said Washington county will subscribe
32 fifty thousand dollars stock, when so rescinded, to the Mississippi and Missouri railroad, and that there be issued county bonds therefor bearing interest at a rate not greater than ten per cent. per annum, and payable in twenty years from date, and that there be a tax of five mills on the dollar if necessary, levied on the taxable property of said county from year to year for the purpose of paying the interest on said bonds, and at the expiration of fifteen years the interest be so increased as not to exceed one per cent. on the dollar if necessary, for the purpose of paying off said bonds, said rate

of tax to be continued until said bonds with the interest is all paid unless said bonds are otherwise disposed of; and that said bonds shall not be issued except said Mississippi and Missouri Railroad Company receive said bonds at their par value in payment of stock in said railroad, and then only as fast as the road progresses towards completion within the limits of said county.

That at said election said proposition was duly adopted by a majority of the electors of said county, and the proposition and vote were by the county judge duly entered at large on the minute book of said county.

And on 5th of April, 1858, the county judge of said county of Washington did, in due form of law, submit to the electors of Washington county the following proposition, that the county of Washington in the said State will aid in the construction of the Mississippi and Missouri railroad by the subscription of one hundred thousand dollars in addition to the $50.000 dollars already authorized to the capital stock of said railroad company, and the bonds of said county be issued in payment of said stock bearing interest at the rate of ten per cent. per annum payable in twenty years from date, and that there be a tax of not more than three mills on the dollar levied on the taxable property of said county from year to year for the purpose of paying the interest on said bonds, and after the expiration of fifteen years the said tax to be so increased as not to exceed ten mills on the dollar for the purpose of paying off said bonds; said tax to continue from year to year until said bonds are all off unless otherwise disposed of; said bonds not to be issued unless said company give to said county good and sufficient security, approved by the county judge in the sum of two hundred thousand dollars, conditioned that said road be completed, and in good running order to the town of Washington in said county and State by the 1st day of September, 1858, and that a depot be permanently established not more than one half mile from the court-house in said town of Washington, and not then, unless said company take said bonds at their face in payment for stock in said road; said stock to be issued direct to the county, said election to be governed by the election laws of the State of Iowa. That at said election a majority of the votes cast were in favor of said proposition, and the county judge then caused the same, and the result of the vote to be entered at large on the minute book of said county.

That each class of said bonds were issued by the said county judge with coupons or interest notes for the interest, payable every six months; said bonds were made payable to James Dawson or bearer. The following are copies of each class of said bonds:

$500. UNITED STATES OF AMERICA. No. 1.

STATE OF IOWA, *County of Washington*:

The county of Washington for and in consideration of five shares of one hundred dollars each of the capital stock of the Mississippi and Missouri Railroad Company promise to pay to James Dawson

or bearer the sum of five hundred dollars on the first day of July, 1878, with interest thereon at the rate of ten per cent. per annum, payable semi-annually on the first day of January and July, in each year, principal and interest payable at the Corn Exchange Bank, in the city of New York, and the faith of the said county of Washington is hereby pledged for the semi-annual payment of interest, and the ultimate redemption of the principal.

I, S. P. Young, county judge of Washington, do hereby certify that by a vote of the legal electors of said county at an election held on the seventh day of August, 1854, in accordance with a proposition, submitted to them according to the laws of the State,
35 the county judge of Washington county was authorized to subscribe fifty thousand dollars to the capital stock of the Mississippi and Missouri Railroad Company, and issue county bonds to the same amount payable in twenty years, and bearing interest at the rate of ten per cent. per annum, and that the above is one of one hundred bonds of five hundred dollars each, numbered from one to one hundred given for said subscription.

In testimony whereof I have hereto set my hand and affixed the seal of the county this first day of July, 1858.

[L. S.] S. P. YOUNG, *County Judge.*

Attest: ALBERT ALLEN, *County Judge.*

Copy of Coupons.

The county of Washington, Iowa, will pay at the Corn Exchange Bank, in the city of New York, on the first day of July, 1859, twenty-five dollars for interest due that day on bond No. 1.

$25. S. P. YOUNG, *C. Judge.*

Copy of bond under vote 5th April, 1858.

$1,000. THE UNITED STATES OF AMERICA. No. 1.

State of Iowa:

The county of Washington, for and in consideration of ten shares of one hundred dollars each of the capital stock of the Mississippi and Missouri Railroad Company, promise to pay James Dawson or bearer the sum of one thousand dollars on the first day of July, 1878,
36 with interest thereon at the rate of ten per cent. per annum, payable on the first day of January and the first day of July in each year principal and interest payable at the Corn Exchange Bank, in the city of New York, and the faith of said county is hereby pledged for the semi-annual payment of the interest and the ultimate redemption of the principal.

I, S. P. Young, county judge of the county of Washington, do hereby certify that by a vote of the legal electors of said county at an election held on the fifth day of April, 1858, in accordance with a proposition submitted to them according to the laws of the State of Iowa, the county judge was authorized to subscribe one hundred thousand dollars to the capital stock of the Mississippi and Missouri

Railroad Company, and issue county bonds to the same amount payable in twenty years, and bearing interest at the rate of ten per cent., and that the above is one of one hundred bonds of one thousand dollars each, numbered from one to one hundred given for said subscription.

In testimony whereof I have hereto set my hand and affixed the seal of the county this first day of July, 1858.

[L. S.] S. P. YOUNG, *County Judge.*

Attest: ALBERT ALLEN, *County Clerk.*

Copy of Coupons.

The county of Washington, Iowa, will pay the bearer at the Corn Exchange Bank, in the city of New York, on the first day of July, 1859, fifty dollars for interest due that day on bond No. 1.

$50. S. P. YOUNG, *C. Judge.*

37 That the relator further shows that said bonds were issued in such class in due form of law; and the relator became the bona fide owner and holder of a large quantity of said bonds and coupons, and the said county of Washington having neglected to pay the interest on said bonds, the relator on the 15th day of August, 1860, commenced his action at law in the United States District Court for the State of Iowa, to which court the present Circuit Court has succeeded. That in his said action in said District Court, the defendant being duly served with process did appear to the said action and on the 17 of September, filed a plea to the jurisdiction of said court, that an action was pending in the District Court for the county of Washington and State of Iowa, wherein one McLure and others were plaintiffs, and county of Washington and others the unknown holders of said bonds were defendants. That said plea to the jurisdiction was overruled, an thereupon on the 9 of October, 1860, the said defendant filed and amended plea to the jurisdiction of said United States District Court, setting up that one Nathaniel McLure and others had brought their bill in equity in the State District Court of Washington county, Iowa, against the county judge of Washington county, and said plaintiff in this suit among others were defendants; that said bill was presented to the State judge of said Washington District Court, at the April term, 1860, and

38 an injunction allowed by the judge thereof against the levying and collecting of any tax to pay said bonds, that an injunction was issued and was then pending in the State court, and the injunction in full force and unsatisfied. That said bill in the State court sought to restrain the payment of said bonds and interest on the grounds, among others, that said bonds were illegally issued and in violation to the constitution of the State of Iowa. The relator demurred to said amended plea to the jurisdiction, and the federal court held the said plea invalid. That the defendants filed several answers to said plaintiff's suit in the federal court, and on the 27 of March, 1861, an amended answer, wherein the defendants did

set forth that said bonds were illegally issued, and that they were not authorized by the constitution of the State of Iowa; and afterwards on the 21st of March, 1862, the said plaintiff and said defendants did file an agreed case to be regarded as a special verdict of a jury; in said agreed case the whole facts in relation to the issue of said bonds, the records of the County Court, the instalments of interest due July, 1859, Jan. 1860, July, 1860, the pleas of the defendant, that said bonds were illegal and unconstitutional were set out; and the said cause was duly submitted to the court. And the court upon said agreed facts did find the law for the plaintiff; and on the 1st day of April, 1862, did order and adjudge that the plaintiff re-
39 cover of the defendant the sum of twenty-five thousand five hundred and thirty-seven ($25,537 50-100) dollars, as by the records of said cause now on file in this court will more fully appear.

And that the said plaintiff avers that prior to the year 1860, it was the duty of the county judge of said county to cause to be levied the taxes specified in said votes of the people of Washington county to pay the interest on said coupons, and he neglected to perform that duty, and after the year 1860 the general assembly of the State of Iowa did authorize the board of supervisors of Washington county to provide for the levy and collection of said taxes.

That the valuation of the property in Washington county is not less than four millions of dollars, and a levy of three mills on the dollar in the case of such class of said bonds will produce a sum more than sufficient to pay the yearly interest on each class of the same.

That both before and after the recovery of said judgment it was the duty of the said board of supervisors to levy and cause to be collected the said taxes, and a demand has been made on the said board of supervisors that they levy and cause said taxes to be collected to pay said judgment, interest, and costs, and that they have refused to do so.

That of said judgment one-third, or the sum of $8,512 50-100, was due on the bonds issued under the vote of 7th of August, 1854,
40 and two-thirds, or $17,025, due on the bonds issued under the vote of April, A. D. 1858.

That your relator is without other adequate remedy at law.

Now, therefore, we being willing that justice should be done in the premises, do command you the said board of supervisors of said county of Washington, that you do forthwith levy and cause to be collected a tax of three mills on the dollar under the vote of the electors of said county, on the 7th of August, 1854, and a tax of three mills on the dollar under the vote of the electors of said county on the 5th day of April, 1856, on the taxable property of said county, and that you cause said tax to be collected continuously every year, and for the last six years; and when collected that you pay therewith the said judgment of $25,537 50-100, and interest from the 1st of April, 1862, and costs, or that you appear before the judges of our said Circuit Court of the United States for the district of Iowa, sitting at Des Moines, at the court-house in Polk county, on the third Tuesday in October, 1867, and on or before the second day of the term to show cause why you refuse so to do.

Witness the Hon. Salmon P. Chase, chief justice of our Supreme Court of the United States, and seal of the said Circuit Court for the district of Iowa, this 16th day of May, A. D. 1867.

[SEAL.] W. G. WOODWARD.
Clerk C. C. U. S.

41 This writ came into my hands the 16th day of May, 1867, and on the 26th day of June, 1867, I served the same by reading the said writ to J. R. Lewis, chairman of the board of supervisors of Washington county, Iowa, and leaving the original writ the said chairman, and by reading and leaving a copy thereof with each member of said board, to wit: Abner Younkin, Wm. Billingsly, Wm. Allen, J. W. Tallman, B. A. Tipton, J. M. Glasgow, George Means, L. W. Nichols, Wm. Wilson, J. Rheinart, G. W. Foreman, Ruben Israel, W. P. Darbeyshire, J. F. McCall. All of this done in Washington county, State of Iowa.

G. W. CLARK,
U. S. Marshal Dist. of Iowa.

Marshal's fees.

Mileage 225 a 6 c	$13 50
Service on 15	30 00
Copies 15	30 00
	$73 50

42 *Reply to return.—Filed Oct.* 30, '67.

THE U. S. *ex re* CLARK DURANT
v.
THE BOARD OF SUPERVISORS OF Washington County. } 424.—Information for mandamus.

The plaintiff in reply to the return of the defendants wherein they set up the said injunction and judgment, say that said cause was finally adjudged in the Washington District Court and taken thence to the Supreme Court, and the said judgment of the District Court allowing and perpetuating said injunction was reversed as appears by the record thereof here shown to the court.

GRANT, *for Pl'ff.*

43 And afterwards, to wit, on the 13th day of May, A. D. 1868, the same being the May term of said Circuit Court, the defendant asked and obtained leave to file an amended answer, which is in words and figures, following:

44 Circuit Court of the United States for the district of Iowa.

Answer of defendant, the Board of Supervisors.

UNITED STATES OF AMERICA, ON RELATION of Clark Durant,
vs.
THE BOARD OF SUPERVISORS OF WASHington County. } No. 424.

Now come the defendant, the board of supervisors of Washington county, Io., and, for answer and return to the alternative writ of mandamus heretofore granted against them, say:

They admit that the county judge of Washington cy. did execute and issue the bonds and coupons described, and that it is recited in said bonds that they were issued in pursuance of a vote of the people of said county to subscribe $100,000 to the capital stock of the M. and M. Railroad Co.

They also admit that the people of Washington cy. did rescind $50,000 of the stock voted to the Philadelphia, Ft. Wayne and Platte River Air Line R. R., and subscribed the same to the M. and M. Railroad.

Defendants deny that it was the duty of the county judge for the year 1860, and of the defendants since that time, or at any time, to levy a special tax of 3 mills on the dollar, on the taxable property in the said county, to pay the interest on said bonds.

45 Def't admits that the valuation of the taxable property in the said county is not less than four millions dollars.

Defendant admits that no special tax has been levied since the year 1859 for the purpose of paying said interest, and aver that they had no power to do so for reasons hereinafter stated.

Defendant admits that relator brought suit on the 15th day of August, 1860, in this court, upon 3 instalments of interest upon said bonds, to wit, the coupons due July 1, 1859, January 1, 1860, and July 1, 1860, being $7,500 in each instalment; and that, by agreement between relator and the said county, said relator recovered judgment, on the 22d of May, 1863, for the amount stated in relator's declaration.

Defendants admit the service of notice on def'ts, by relator, demanding that defendants levy said tax. Def'ts deny that the relator is without other adequate remedy at law.

Def'ts admit that relator has applied to this court for the alternative writ of mandamus to compel the def'ts to levy a special tax to pay of the mentioned indebtedness.

Defendants, further answering the said alternative writ of mandamus, say, as a reason why they have not levied the tax required as required in said writ:

That they have ever been ready and willing to do and dis-
46 charge all acts and duties enjoined upon them by law, and still are so disposed, and that they have always been and still

are well disposed to obey any and every mandate and order this court. But defendants say they have no legal authority to levy said special tax, and there has been no power or authority on the part of defendants, since April 12, 1860, to levy any tax over and above the said general tax of 4 mills on the dollar upon the taxable property in the said county, which amount the defendants did levy for the year 1863–1864, and levied a general tax of 3 mills on the dollar for the previous years, including the year 1860. Def'ts further state, that, for the 1859, the co. judge of said cy. did levy a special tax of 3 mills on the dollar, on the taxable property in said county, for the payment of the said coupons, and the proper officers of the said cy. were about to proceed to collect the said special tax so levied when they were enjoined from so doing, as hereinafter shown. Def't, for further answer to the alternative writ of mandamus why they have not levied said tax, and are unable so to do or perform what is required of them by the said writ in the levy of the said tax, state:

That on the 12th day of April, 1860, and long before the bringing of the said suit by relator upon the said coupons, and before this court had acquired jurisdiction of the parties and subject-mat-
47 ter of said cause of action, a petition in equity was filed in the district court of Washington county, Iowa, by Nathaniel McClure, John Masher, Michael Hayes, O. H. Bizer, Wm. R. Nugent, citizens and tax-payers of said Washington cy., for themselves, the plaintiffs named therein, and other tax-payers of the same county too numerous to be therein severally named, to which suit S. P. Young, then county judge, and S. G. Owen, then treasurer and collector, and the Mississippi and Missouri Railroad Co., were made defendants, and duly served with notice of the pendency of said cause, alledging, among other things, that the said bonds and coupons were and are illegal and void, and issued without legal authority, and that the proper officer of said county had no authority to levy and collect any tax upon the taxable property in the said county, and that the said officers were about to levy and collect a special tax for the payment of the said bonds and coupons, and praying that they and their successors may be enjoined from levying or collecting any tax for the payment of the said bonds or coupons; and a notice of said suit was duly served upon said S. P. Young, county judge of the said county, who was then the officer of said county, whose duty it was levy all taxes of and in said county, and the other defendants, on the 27th day of April, 1860; and the said court had had jurisdiction of the parties to the suit and to the said cause of action, and the said petition was presented to the Hon. W. E. Miller,
48 judge of the district court of the said county, who ordered that the said writ of injunction therein issue as prayed for in the said petition; and the writ of injunction was issued by the clerk of the said court, on the order or allowance of the said judge, on the 12th day of April, 1860, and was served on the county judge of said county on the 27th of April, 1860. The said writ of injunction is still in full force, operation and effect, and is binding upon these defendants, who are the legal successors of the said judge, who were duly substituted as defendants in said suit.

Defend't farther states that relator and all of the owners of said bonds and coupons in this cause were subsequently, to wit, November 13th, 1860, made a party defendant in the said injunction suit, and filed his answer therein on the 27th day of November, 1860, and a motion to dissolve the injunction, which motion was overruled and the said injunction in full force and effect, both as against these defendants and the said relator.

Defend's file herewith a certified transcript of the petition, notice, writ of injunction and of all the pleadings and exhibits and orders in the said cause, and make the same a part of this his answer to the said writ, and marks the same "exhibit A." Defend't say that the said S. P. Young, the then county judge of the said county,

49 and these defendants, as his successors, ever since the date of the said injunction and long before the suit by relator brought upon his said coupons, has been enjoined and restrained from levying the said tax or doing or performing of the acts and things they are required to do by the said alternative writ of mandamus.

Defendants say that if they should proceed to levy any special tax to pay the said coupons or the said judgment recovered in this court thereon as aforesaid, by relator, they would be guilty of contempt of the said District Court of Washington county, and of the judge thereof, as they are informed and believe.

Def'ts say that if they should proceed to levy the said tax required, they would be arrested and held in custody of the said District Court for contempt, and that it would not be within their power to levy the said tax.

Defendants say that they are willing and ready to levy the said tax whenever it is in their power so to do, and whenever it is their duty in the premises; but say they have no power or authority to the said act as required.

Wherefore the defendants pray that they may be herein dismissed with their costs herein expended.

HENRY STRONG.
PATTERSON & RHEINART,
Att'ys for Board of Supervisors of Washing. C'y.

50 I, J. Rheinart, being duly sworn, on my oath say, that I am one of the attorneys, agent and member of the board of supervisors of said Washington c'y, and have been appointed by them to attend to the defence of this suit; that I am personally knowing to the facts stated in the foregoing answer, and am authorized by and as one of said defendants to make this affidavit, and that the allegations in said answer contained are true.

J. RHEINART.

Sworn to and subscribed before me this 15th day of October, 1867.

W. G. WOODWARD, *Clerk.*

51 And afterwards, to wit, on the 15th day of May, A. D. 1868, the plaintiff filed his demurrer to defendants' return to the alternative writ of mandamus, in words and figures following, to wit:

52 Circuit Court of the U. S. dis. of Iowa.

THE U. S., CLARK DURANT
v.
THE BOARD OF SUPERVISORS OF WASHINGTON County. } 424.

The plaintiff demurs to the defendants' return, and for cause of demurrer says:

The plaintiff demurs to that part of the return of the defendant, beginning at the words "def'ts' further answer," &c., to the end thereof, wherein the defendants set out certain proceedings in the District Court of Iowa, for Washington county, and the Supreme Court of Iowa, for the following causes:

1st. The record thereof is imperfect, not setting the judgment of the State Supreme Court reversing the judgment of the court below.

2. The said part of said answer leaves date of the commencement of the plaintiff's suit in this court blank.

3. Because the judgment of the State Supreme Court, reversing the judgment of the Washington District Court, dissolves the injunction of the latter court, and that proceeding is no bar to the writ in this cause.

4. Because any defence arising out of the proceedings in the State, not only ought to have been, but were pleaded in bar of the
53 action in this court, and being held invalid as a bar to the writ, were no bar to the writ in this cause.

5. Because the mandamus in this cause is the process to enforce the payment in place of an execution, and no proceedings in a State Court can bar the final process in this court on the judgment.

6. The plaintiff, Durant, having commenced his action in this court, before he intervened in the State court, and his intervention in that court having been pleaded in this court and overruled, and judgment rendered, no proceedings in the State court can be used as a bar to the enforcement of the judgment herein rendered.

7. Because this court having jurisdiction to render the judgment in this court, has jurisdiction to enforce it by writ of mandamus, any proceedings in the State court notwithstanding; wherefore, &c.

GRANT, *for Pl'f.*

54 And afterwards, to wit, on the 27th day of May, A. D. 1868, the same being at the May term of said Circuit Court, the following was ordered to entered of record, to wit:

THE UNITED STATES *ex rel.* CLARK DURANT
vs.
THE BOARD OF SUPERVISORS OF WASHINGTON County. } No. 424. Law.

This cause came on to be heard, Grant for the plaintiff, Strong & Lewis for the defendant. Upon argument the demurrer was considered. And the court doth order, adjudge that the demurrer be sustained, and the return held insufficient to the alternative writ.

And the defendant abided by the [the] demurrer. Thereupon it is ordered and adjudged, that a peremptory writ of mandamus issue from this court, as prayed for in said alternative writ of mandamus. And the defendants prayed for a writ of error, which is allowed.

The defendant being required to give bond in the penal sum of $500, conditioned as the law directs.

55 And afterwards, to wit, on the 4th day of June, A. D. 1868, an appeal bond was filed (and approved) in the office of the clerk of said court in words and figures following, to wit:

Bond.—Filed Jan. 4, '68.—434.

56 Know all men by these presents, that we, the Board of Supervisors of Washington county, in the State of Iowa, and Henry Strong and John W. Rankin, do acknowledge ourselves bound to Clark Durant of , in the penal sum of five hundred dollars.

The condition of this obligation is this: That whereas the Board of Supervisors of Washington county, in the State of Iowa, are about to take a writ of error from a decision of the Circuit Court of the United States, for the district of Iowa, to the Supreme Court of the United States, in a certain case therein pending, wherein the U. S. ex rel. Clark Durant is pl'ff, and the Board of Supervisors of Washington county is def't. Now, if said Board of Supervisors shall duly prosecute their writ of error, and pay all damages and costs which may be adjudged against them, and abide by, and perform all the orders and judgments of said Supreme Court of the United States, then this obligation to be void, otherwise, in full force.

Board of Supervisors of Washington county by
H. STRONG, *their Attorney.*
HENRY STRONG, *Surety.*
J. W. RANKIN, *do.*

June 4, 1868.

This bond approved June 4, A. D. 1868.
J. M. LOVE, *Judge U. S. Court.*
W. G. WOODWARD, *Clerk.*

57 Approved and filed by me.
W. G. WOODWARD,
Clerk C. C. U. S.

I, J. Rheinart, Commissioner for the Circuit Court of the United States, for the district of Iowa, hereby certify, that the above signers, as bondsmen for the Board of Supervisors of Washington county, Iowa, personally appeared before me, and upon their several oaths by them, before me taken, stated that they severally were worth over one thousand dollars in property exempt from execution, and that they are freeholders of this county.

Witness my hand at Washington, Washington coy., Io., the 5th day of June, 1868.

J. RHEINART,
U. S. Commissioner.

58 And on the same day, to wit, the 4th day of June, A. D. 1868, a writ of error was sued out of the office of the clerk of said court in words and figures following, to wit :

59 *Writ of Error.*—424.

UNITED STATES OF AMERICA:

The President of the United States of America to the Judges of the Circuit Court of the United States, for the district of Iowa, greeting :

Because in the record and proceedings, and also in the rendition of the judgment of a plea in said Circuit Court for said district, wherein the United States on the relation of Clark Durant is pl'ff, and the Board of Supervisors of the county of Washington is defendant, a manifest error hath happened to the damage of the said defendant, you are hereby commanded, if judgment be therein given, that then, under your seal, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held; that said record being inspected, the Supreme Court may cause the said error to be corrected, which of right ought to be.

60 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, this 4th day of June, 1868.

Witness:

[L. S.] W. G. WOODWARD,
Clerk of Circuit Court U. S., with the seal affixed.

Rec'd copy, and I acknowledge service of this writ of error June 4, 1868.

GRANT & SMITH,
Att'ys for Clark Durant.

61 And afterwards to wit, on the 23d day of June, A. D. 1868, a citation was filed in the office of said clerk in words and figures following to wit:

62 United States of America ex rel. Clark Durant and Clark Durant, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of Iowa, wherein the United States on the relation of you the said Clark Durant is pl'ff, and the board of supervisors of Washington county is defendant, to show cause, if any you have, why

the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel F. Miller, one of the justices of the Supreme Court of the United States, this sixth day of June, A. D. 1868.

SAM. F. MILLER.

The pl'ff accepts service of the above citation the 6th day of June, A. D. 1868. Witness

GRANT & SMITH,
Att'ys for Clark Durant.

Endorsed: 424. U. S. ex rel. Clark Durant *v.* b'd supervisors Washington co. Citation. Filed June 23, 1868. W. G. Woodward, clerk.

63 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the Circuit Court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea in said Circuit Court, for said district, wherein the United States of America on the relation of Clark Durant is pl'ff, and the board of supervisors of the county of Washington is defendant, a manifest error hath happened, to the damage of said defendant, you are hereby commanded, if judgment be therein given, that then, under your seal, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court, to be then and there held; that said record
64 being inspected, the Supreme Court may cause the said error to be corrected, which of right ought to be.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States and the seal of said Circuit Court this 4th day of June, 1868.

Witness, [SEAL.] W. G. WOODWARD,
Clerk of Circuit Court U. S., with the seal affixed.

Rec'd copy, and I acknowledge service of the writ of error June 4, 1868.

GRANT & SMITH,
Att'ys for Clark Durant.

Endorsed: Supreme Court U. S. 1868, December term. No. 341. U. S. ex rel. Clark Durant *vs.* Board of Supervisors of Washington county in Iowa. Writ of error. Filed 15 December, 1868.

65 Supreme Court of the United States.

UNITED STATES *ex rel.* CLARK DURANT, def't in error,
vs.
THE BOARD OF SUPERVISORS OF WASHINGTON county, Iowa, pl'ffs in error.

Now comes the board of supervisors of Washington County and say there is error in the record of the above-entitled cause in this, that the court below sustained the demurrer of relator to the answer of defendants. And this error the def'ts assign and pray judgment of this court.

H. STRONG *for Def'ts.*

Endorsed: No. 341. Sup. Court U. S. U. S. ex rel. Clark Durant vs. Board of Supervisors of Washington Co., Iowa. Assignment of error. Filed 10 December, 1868.

66 CIRCUIT COURT OF THE UNITED STATES,
For the District of Iowa:

I, W. G. Woodward, clerk of the Circuit Court of the United States for the district of Iowa, hereby certify that the above and foregoing is a full, true and complete transcript of the proceedings had in said court in the above-entitled cause, and that the same is as full, true and complete as appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, done at the city of Des Moines this 27th day of Nov., 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*



